



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2011-0174; FRL-9835-5]

RIN 2025-AA30

Electronic Reporting of Toxics Release Inventory Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, EPA requires facilities to report non-trade-secret Toxics Release Inventory (TRI) forms to EPA using electronic software provided by the Agency. Electronic reporting of TRI forms provides numerous benefits, including making it easier for facilities to report accurate information, expediting form completion due to the pre-population of many form elements, decreasing the cost to EPA of processing forms, and providing TRI information more quickly to the public. The only exception to this electronic reporting requirement is for the few facilities that submit trade secret TRI information, which will continue to submit their trade secret reporting forms and substantiation forms in hard copy.

Under this rulemaking, EPA also requires facilities to submit electronically via the Internet (i.e., not on paper forms or CD-ROMs) any revisions or withdrawals of previously submitted TRI reporting forms. Additionally, EPA will no longer accept submissions, revisions, or withdrawals of TRI reporting forms submitted for reporting years prior to reporting year 1991. For trade secret submissions, EPA will still only accept revisions or withdrawals of previously submitted trade secret information on paper forms, though only for reporting years back to reporting year 1991.

DATES: This final rule is effective on January 21, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-HQ-TRI-2011-0174**. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>. For specific information on this rulemaking, contact David Turk, Toxics Release Inventory Program Division, Mailcode 2844T, OEI, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone: (202) 566-1527; Email: turk.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and General Information

A. Acronyms and Abbreviations Used in this Document

CBI -- Confidential Business Information
CDX -- Central Data Exchange
CFR -- Code of Federal Regulations
CROMERR -- Cross-Media Electronic Reporting Regulation
DPC -- TRI Data Processing Center
EO -- Executive Order

EPA -- U.S. Environmental Protection Agency
 EPCRA -- Emergency Planning and Community Right-to-Know Act
 FR -- Federal Register
 GPEA -- Government Paperwork Elimination Act
 ICR -- Information Collection Request
 NAICS -- North American Industry Classification System
 NTTAA -- National Technology Transfer and Advancement Act of 1995
 OEI -- Office of Environmental Information (EPA)
 OMB -- Office of Management and Budget (Executive Office of the President)
 PPA -- Pollution Prevention Act
 RY -- Reporting Year
 SIC -- Standard Industrial Code
 TDX -- TRI Data Exchange
 TRI -- Toxics Release Inventory
 TRI-MEweb -- Toxics Release Inventory-Made Easy Internet-based Software Application
 U.S.C. -- United States Code

B. Does this Action Apply to Me?

This final rule applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in Part 372, Subpart B, of Title 40 of the Code of Federal Regulations. Potentially affected categories and entities may include, but are not limited to the following:

Category	Examples of Potentially Affected Entities
Industry	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.</p> <p>*Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39):</p> <ul style="list-style-type: none"> • 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); • 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10,

	<p>Metal Mining (except 1011, 1081, and 1094));</p> <ul style="list-style-type: none"> • 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); • 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); • 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); • 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); and • 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities

If you have questions regarding the applicability of this action to a particular entity, consult the individual listed in the preceding FOR FURTHER INFORMATION CONTACT section. This action may also be of interest to those who use EPA’s TRI data and have an interest in the public availability of high-quality, timely TRI data and information, including state agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

II. What Is EPA's Statutory Authority for Taking this Action?

The EPA is implementing this action under sections 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(g), 11023(h) and 11048, and section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106.

Under EPCRA, Congress granted EPA broad rulemaking authority. EPCRA section 328 provides that the “Administrator may prescribe such regulations as may be necessary to carry out

this chapter.” 42 U.S.C. 11048. EPCRA requires EPA to “publish a uniform toxic chemical release form for facilities covered” by the TRI Program. 42 U.S.C. 11023(g).

The Government Paperwork Elimination Act (GPEA) (Public Law 105-277 (44 U.S.C. 3504)) allows Federal agencies to provide for electronic submissions and the use of electronic signatures, when practicable. Similarly, EPA’s Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3), published in the Federal Register on October 13, 2005, states that any requirement in Title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions, once the Agency publishes a notice that electronic document submission is available for that requirement.

III. Background Information and Summary of Final Rule

A. Description of Change

EPA is requiring facilities to submit non-trade-secret TRI reporting forms to EPA electronically via the Internet. EPA will no longer accept paper submissions of TRI reports, except for trade secret submissions as defined under EPCRA section 322 (42 USC section 11042) which will still be submitted on paper forms (including sanitized and unsanitized versions).

EPA currently provides an online-reporting application, TRI-MEweb, for facilities to use to submit TRI reporting forms electronically. TRI-MEweb provides a number of features that allow facilities to prepare and submit their TRI reports to EPA more efficiently. For example, it includes data validation tools that help facilities submit complete and valid data and compare current reporting year data to prior reporting year data – a feature which can sometimes help facilities identify potential data errors. Additionally, TRI-MEweb will pre-populate forms based on the prior year’s reporting data, which will expedite the data preparation process and help

reduce errors.

Under this rule, only TRI facilities that submit trade secret information will continue to submit two versions of the substantiation form and two versions of Form R or Form A — sanitized versions that include the generic chemical name that is structurally descriptive of the chemical being claimed as a trade secret and unsanitized versions that include the trade secret chemical name. EPA strongly recommends that TRI facilities that submit TRI trade secret information use a computer or typewriter to prepare their hard-copy submissions of TRI information and consult the TRI website (<http://www.epa.gov/tri>) for more detailed information.

Facilities often send additional, unsolicited documentation concerning their TRI reporting to EPA. Though EPA does not currently request that facilities submit TRI-related, miscellaneous documents, some documents contain useful information on current or future non-reporting (e.g., due to not reaching reporting thresholds and facility closures), internal self-audits, notices of bankruptcy, and changes in facility ownership. Such miscellaneous documents help the EPA maintain the quality of TRI data. Miscellaneous documents that do not directly address TRI non-reporting or provide contextual information on TRI reporting are typically not useful to the Agency. The EPA requests that facilities refrain from submitting unsolicited documents that do not provide useful context on matters related to TRI reporting.

To codify this rule, EPA is adding paragraph (c) to 40 C.F.R. § 372.85 to require regulated facilities to submit TRI reporting forms electronically using the current electronic reporting tool provided by EPA. EPA is also revising 40 C.F.R. § 372.85(b) to remove a mention of magnetic media, which conforms the regulation to the proposal and thereby maintains consistency throughout TRI regulations and avoids confusion.

In summary, EPA will only accept TRI reporting forms that are submitted electronically

via the Internet, except for trade secret TRI forms and substantiations; and EPA will not accept or process TRI reporting forms that are not submitted in the appropriate manner.

B. How Does a Facility Register to Use TRI-MEweb to Prepare and Submit TRI Reporting Forms?

TRI-MEweb is an interactive, user-friendly Web-based application that guides facilities through the TRI reporting process. As currently implemented, one or more representatives from each facility must establish an account with EPA's Central Data Exchange (CDX) in order to prepare, transmit, certify, and submit TRI Forms. CDX is EPA's centralized node on the Environmental Information Exchange Network that serves as EPA's main mechanism for receiving and exchanging electronic information reported via the Internet. A facility representative may register for a CDX account or gain access to an existing CDX account at <https://cdx.epa.gov/>.

During the CDX registration process, CDX prompts the facility representative to indicate which applications (e.g., TRI-MEweb) to link with the account. If the facility representative has previously registered with CDX for other purposes, then he/she can add TRI-MEweb to his/her existing CDX account.

When adding TRI-MEweb to the CDX account, CDX will ask the facility representative to select a role as a form Preparer or Certifying Official. Both a Preparer or Certifying Official can enter data onto a facility's TRI reporting form in TRI-MEweb and validate it for certification; but only a Certifying Official can approve and certify a TRI reporting form and submit the final, certified form to EPA. Preparers and Certifying Officials can use the same account to perform their TRI reporting roles (preparing and/or certifying TRI forms) for multiple facilities for which they are responsible.

EPA's current electronic reporting procedures require each Certifying Official to sign and submit an Electronic Signature Agreement (ESA) to the EPA before certifying any TRI reports for a given facility. Currently, once a facility representative registers in CDX as a TRI-MEweb certifying official, the representative may elect to: 1) sign and submit an ESA electronically using a real-time online process through a third-party identity verification vendor; or 2) sign and mail a paper ESA to the EPA's Data Processing Center (DPC).

Real-time Online Process: Starting with RY 2012, Certifying Officials may use a third-party identity verification vendor to establish an ESA by voluntarily providing personal identifying information to authenticate his or her identity. The EPA does not collect any of this personal information. If successfully used, the electronic method allows near-instantaneous approval of an ESA. An electronic ESA will allow a Certifying Official to certify and submit TRI reporting forms for multiple facilities for which the official is responsible. The electronic ESA approval method is optional.

If the Certifying Official does not wish to provide personal information to this third-party vendor, they should submit a paper ESA form, described below, at least two weeks before the July 1st reporting deadline. Further, not every Certifying Official will be able to authenticate his or her identification successfully using this identity verification process and will, as a result, need to submit a paper ESA form.

Paper ESA: In lieu of the electronic ESA process, the CDX registration process can generate a printable ESA form. A Certifying Official must then sign and mail this ESA form to EPA's DPC for approval before the Certifying Official can begin to certify and submit any TRI forms to EPA. It may take up to five business days for EPA to approve a hardcopy ESA so EPA encourages Certifying Officials who submit a paper ESA to do so well before the July 1st

deadline. Multiple facilities, each with a unique TRI Facility Identification (TRIFID), can also be added to a single paper ESA form. All TRIFIDs associated with the Certifying Official will be listed on the printout of the ESA document.

Once the ESA is approved by EPA (whether instantaneously through the electronic ESA process or via receipt and processing of a paper ESA), the Certifying Official may review, certify, and submit any pending TRI submissions to EPA using TRI-MEweb and CDX. More detailed information on these procedures is available on the TRI website (<http://www.epa.gov/tri>).

C. How Does a Facility Use TRI-MEweb to Prepare and Submit TRI reporting forms?

Once registered with CDX and TRI-MEweb, a facility's Preparer or Certifying Official can gain access to TRI-MEweb through CDX. Once opened, the TRI-MEweb application provides interactive Web pages that enable a Preparer or Certifying Official to enter and validate the current year's TRI reporting form(s). After providing and validating the pertinent TRI reporting forms, a Preparer (or Certifying Official) can transmit the data electronically for certification where it is then available for certification by the facility's Certifying Official(s). The Certifying Official can then log into TRI-MEweb via CDX to review, certify, and submit the TRI report to EPA. Once EPA receives the certified report, the data are then ultimately sent to the public TRI database (and if appropriate, also to a state, tribe, or territory).

Some TRI facilities have their own software or use private software to assist in collecting chemical release data. This "third-party software" is often designed to produce output data files that match EPA's electronic data structure specifications. TRI-MEweb accepts chemical data files from third-party software using Extensible Markup Language (XML). Detailed information describing the XML schema TRI-MEweb uses for the current reporting year is available online

at <http://www.exchangenetwork.net/exchanges/cross/tri.htm>.

Detailed instructions on using CDX and TRI-MEweb, including tutorials, are available on the TRI website and in the Reporting Forms and Instructions (RFI), which is also available through the TRI website. Facilities may also contact the TRI Information Center, the CDX Helpdesk, the Regional TRI Coordinators, or the TRI Program staff at EPA Headquarters for further assistance. Please see the “Contact Us” information located on the TRI website for further details.

TRI facilities are required to report to the EPA and the appropriate state, tribe, or territory (known as the dual-reporting requirement). However, facilities that are located in states, Indian country, or territories that actively participate with the TRI Data Exchange (TDX) can meet the dual-reporting requirement by submitting TRI reports using TRI-MEweb. For such facilities, reports submitted via TRI-MEweb are electronically made available to the state, tribe, or territory in which the facility is located, thus satisfying the requirement to submit TRI reporting forms to both the applicable state and EPA. Please note that some states, tribes, or territories may require additional reporting beyond the federal requirements. Dual-reporting does not satisfy such additional requirements.

For facilities located in states, Indian country, or territories not actively participating in TDX, the Certifying Official can print a hard copy of the TRI reporting forms or save the forms to a diskette and then submit the signed hard copy forms or diskette along with a printed and signed certification statement to the appropriate state, tribe, or territory.

D. How Will this Rule Affect Revisions, Withdrawals, and Late Submissions of TRI Reporting Forms?

This rule requires facilities that wish to revise or withdraw previously submitted non-

trade-secret TRI reporting forms to do so through TRI-MEweb. The EPA will continue to allow facilities to revise, withdraw, or submit TRI reports going back to RY 1991, but not for reporting years prior to RY 1991. In January of 2014, the EPA will release a version of TRI-MEweb that will allow a facility to revise or withdraw TRI reports in TRI-MEweb for prior reporting years, back to RY 1991, even if the facility did not use TRI-MEweb for the original submission. The process used in TRI-MEweb to submit, revise, or withdraw TRI reports for RY 2005 through the present year will differ from the process used for reporting years prior to RY 2005. As addressed below, TRI-MEweb will provide more validation checks for the RY 2005 through the present reporting year period than it will provide for reporting years prior to RY 2005.

For revisions to TRI reporting forms submitted for RY 2005 through the current reporting year, TRI-MEweb will display TRI reporting forms as submitted and allow facilities to modify their data. TRI-MEweb will also validate the data using the validation checks that were in place in TRI-MEweb for those data for that reporting year. Similarly, TRI-MEweb will provide these validation checks for late submissions for RY 2005 through the current reporting year.

For revisions to TRI reporting forms submitted for RYs 1991-2004, TRI-MEweb will provide a blank form for that reporting year and allow the facility to enter data into the form. TRI-MEweb will perform basic error checking to ensure nonsensical values are not provided (e.g., submitting letters in a numeric field or providing negative release quantities), but will not perform the extensive validation checks provided for RY 2005 through the current reporting year. TRI-MEweb will likewise only provide basic error checking for late submissions of TRI reporting forms for RYs 1991-2004.

Keeping the interface simple and not implementing complicated validation checks for RYs 1991 – 2004 makes it economically and functionally feasible to modify TRI-MEweb to

support these additional reporting years. Further, extending the range of reporting years in which facilities may revise, withdraw, and submit TRI reporting forms from RY 2005 (as in the proposed rule) to RY 1991 will allow facilities a greater number of years to submit updated TRI reporting forms. The TRI reporting forms have remained relatively stable from RY 1991 through RY 2004 and this range of years includes the first reporting year (RY 1991) in which facilities reported data elements required by the Pollution Prevention Act of 1990. The EPA has not received a revision for a reporting year prior to RY 1991 since 2004.

As with original TRI submissions, preparing and submitting revisions/withdrawals electronically should facilitate the reporting process for facilities, while also making it possible for EPA to more quickly process and make the updated data available to the public. Information on using TRI-MEweb to submit TRI revisions/withdrawals will be available on the TRI website and in the TRI-MEweb application.

As part of a process to reconcile a facility's name, address, and/or ownership and other facility-level information that differs from information provided during a previous reporting year, the EPA has historically contacted facilities about such differences and allowed facilities to update their facility-level information via letters, emails, and other methods less formal than a certified TRI reporting form. Additionally, facilities could access, print, mark up, and certify a copy of a submitted TRI reporting form using the electronic Facility Data Profile (eFDP) application to request revisions to that TRI reporting form. With this rulemaking, the EPA will no longer solicit or allow revisions to TRI reporting forms via the reconciliation process or process marked-up copies of certified forms printed using the eFDP application. Instead, facilities that wish to revise or withdraw previously submitted non-trade-secret TRI reporting forms must use TRI-MEweb to do so.

Please note that any revisions to and withdrawals of TRI reporting forms should also be submitted to the state, tribe, or territory that received the initial TRI report. The TRI Reporting in Indian Country rulemaking, published in the Federal Register on April 19, 2012, applies to RY 2012 onward, which means submissions of, revisions to, and withdrawals of TRI reporting forms for reporting years prior to RY 2012 should be sent to EPA and the appropriate state rather than to EPA and the tribe to which the facility currently reports. For example, while a facility located in Indian Country would submit TRI reporting forms to the EPA and the appropriate tribe for a revision to a RY 2012 TRI report, this facility should submit a revision to a TRI reporting form to the EPA and the appropriate state for any reporting year prior to RY 2012. More information on how to revise and withdraw TRI reporting forms while located in Indian Country is available via the TRI website (<http://www.epa.gov/tri>). Facilities may also contact the TRI Information Center, Regional TRI Coordinators, or TRI Program staff at EPA Headquarters for further assistance.

IV. What Comments Did EPA Receive on this Rule for Electronic Reporting of Toxics Release Inventory Data and What Are EPA's Responses to Those Comments?

EPA received five comments on the Federal Register document "Electronic Reporting of Toxics Release Inventory Data" (March 5, 2012; 77 FR 13061). These comments are accessible under Docket ID No. EPA-HQ-TRI-2011-0174. The commenters included three individuals, one agency, and one industry group. The comments from the individuals and agency were supportive of EPA's intent to streamline and improve the submission of TRI reporting forms by requiring facilities to report such data electronically. These comments generally stated that the rule would enable faster release of TRI data, reduce transcription errors, and improve data quality. Two of these commenters, while supporting EPA's action, requested that EPA provide some allowance for facilities unable to access the Internet for various reasons such as: a grace period for new

facilities, a transition period for smaller facilities, and waivers for facilities in rural areas lacking Internet service. One of these commenters expressed concern with the EPA continuing to allow paper submissions of TRI reporting forms containing trade secret information. This commenter also requested EPA institute a more rigorous process for approving certifying officials and suggested that EPA require facilities to register more than one certifying official.

EPA had proposed limiting revisions and withdrawals of TRI reporting forms back to RY 2005 due to current capabilities of TRI-MEweb. In response, the industry group comment requested that EPA consider allowing revisions to and withdrawals of data submitted for reporting years prior to 2005. Specifically, this comment suggested EPA allow facilities to submit on paper any revisions or withdrawals of previously submitted TRI reporting forms for reporting years prior to 2005.

EPA's responses are provided below.

1. Comment Recommending the EPA Allow Revisions and Withdrawals of TRI Reporting Forms for Reporting Years Prior to 2005 via Paper

One comment stated the EPA should continue to accept revisions and withdrawals of TRI reporting forms for all reporting years rather than limiting revisions and withdrawals to those pertaining to RY 2005 through the present reporting year. The comment argues that maintaining the capability for facilities to revise or withdraw reports for reporting years prior to 2005 is important for purposes of compliance and enforcement and helps ensure data accuracy and integrity in the publicly-available databases that provide TRI data.

Recognizing the potential difficulties in updating TRI-MEweb to accommodate revisions and withdrawals of TRI for all reporting years, the comment recommends the EPA accept such revisions and withdrawals on paper for reporting years prior to 2005. To support its position, the comment notes that the EPA receives a small number of revisions and withdrawals pertaining to

reporting years prior to 2005 and suggests the cost to process paper submissions of these revisions and withdrawals would be minimal because EPA already plans to receive a limited number of trade secret submissions submitted by paper.

The EPA has reassessed its proposal to limit revisions and withdrawals of TRI reporting forms back to RY 2005 and will modify TRI-MEweb to support revisions, withdrawals, and late submittals of TRI reporting forms back to RY 1991. Keeping the interface simple and not implementing complicated validation checks for RYs 1991 – 2004 makes it economically and functionally feasible to modify TRI-MEweb to support additional reporting years. This update to TRI-MEweb will also support the spirit of the rulemaking to minimize paper flows of TRI reporting forms and expedite the release of TRI data to the public.

Extending the range of reporting years in which facilities may revise, withdraw, and submit TRI reporting forms from RY 2005 (as proposed) to RY 1991 will allow facilities a greater number of years to submit updated TRI reporting forms. EPA believes RY 1991 is a logical reporting year to serve as a cutoff because the reporting form remained relatively stable during this period and it includes the first reporting year (RY 1991) in which facilities reported data elements required by the Pollution Prevention Act of 1990. The EPA has not received a revision for a reporting year prior to RY 1991 since 2004.

2. Comment Recommending the EPA Require TRI Facilities to Report Trade Secrets Electronically

One comment stated that the EPA should require TRI facilities to report trade secrets electronically so that EPA can completely eliminate the need to spend any resources or money processing TRI reporting forms submitted by paper. The comment also stated it would be more effective to institute such a requirement now than to conduct another rulemaking process later to require the electronic reporting of trade secrets.

The EPA recognizes the benefits in requiring facilities to submit all TRI submissions electronically. However, to incorporate trade secret reports into TRI-MEweb, EPA would require enhancements to TRI-MEweb to ensure it adheres to the higher level of security compliance required to accept trade secrets via an online reporting tool. Due to resource constraints, EPA is not at this time incorporating the few trade secret reports received yearly (consistently fewer than ten such reports) into TRI-MEweb. However, EPA does not foreclose the possibility that incorporating trade secrets into TRI-MEweb might prove worthwhile in the future.

3. Comment Recommending Changes to the Certifying Official Registration Process

One comment suggested that the EPA should provide a more rigorous registration process than it currently uses for a person to register as a Certifying Official because the reports are submitted online, so the lack of a handwritten signature and the ease to which certifying officials can submit TRI forms could cause a certifier to minimize the importance of the certification process.

The comment also recommends that the EPA require each facility to designate at least two Certifying Officials with the Central Data Exchange (CDX) to help ensure facilities can certify their TRI reporting form(s) should a Certifying Official be unavailable near the TRI reporting deadline.

TRI regulations require TRI reporters to designate a senior management official who can certify TRI submissions for the facility. EPA defines a “senior management official” to be a person who is “an official with management responsibility for the person or persons completing the report” or “the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements.” 40 C.F.R. § 372.3. The

ultimate responsibility for submitting TRI reporting forms rests on the owners and operators of facilities that trigger TRI reporting thresholds. 40 C.F.R. §§ 372.5, .30. TRI reporters bear the responsibility to ensure they follow statutory and regulatory requirements, including submitting TRI reports in a timely fashion. EPA believes TRI reporters recognize this responsibility regardless of whether they submit electronically or by paper.

Currently, in order to become a Certifying Official for a facility, a person must sign (in hard copy or electronically with adequate identity proofing) an electronic signature agreement (ESA) and send the ESA to the EPA before being able to certify and submit TRI forms using TRI-MEweb. The certification process used for TRI reporting follows EPA's CROMERR regulations (40 CFR part 3) that provide baseline requirements for electronic reporting to help ensure the signatory of any electronic submission understands the content of the submission. Recently, EPA bolstered its online reporting security by requiring Certifying Officials to select a question and provide an answer prior to gaining access to TRI reports ready for submission. Additionally, EPA continually considers new ways to improve the security of its online reporting processes.

Different TRI reporters have different management structures and some TRI facilities might only have one person who satisfies the definition for a "senior management official." The EPA strongly encourages facilities to register more than one Certifying Official with CDX, but does not wish to impose a requirement on businesses that they register two or more Certifying Officials when one Certifying Official is adequate.

4. Comment Expressing Concern That the Online Reporting System Could Fail

One comment expresses concern that some unforeseen problem, such as a storm, could disable the online reporting system used to submit TRI reporting forms. The comment requests

the EPA extend the reporting deadline or provide an alternative reporting method should an unforeseen problem arise.

The TRI reporting deadline is a statutory deadline. However, as appropriate, EPA can respond to unforeseen events such as natural disasters that would prevent the timely submittal of TRI reporting forms. Should such an event arise, the Agency would consider the particular circumstances and conduct outreach as necessary.

5. Comment Recommending EPA Provide a Liaison with Facilities to Assist with Reporting TRI Reporting Forms Electronically

One comment recommends that EPA designate human resources that can act both as liaisons to facilities that seek assistance with submitting TRI reporting forms electronically and as an internal development team to continue to make improvements to the electronic reporting application using feedback received from facilities.

EPA recognizes the need to assist facilities with submitting TRI reporting forms electronically, and addresses this need, in part, by maintaining the TRI Information Center and CDX Helpdesk. Furthermore, facilities may solicit assistance from the TRI DPC, Regional TRI Coordinators, or TRI Program staff at EPA Headquarters.

Each year EPA typically incorporates improved enhancements into TRI-MEweb, often including features to address aspects of the software with which facilities have required assistance in the past. The Agency plans to continue improving TRI-MEweb and encourages TRI reporters to suggest improvements (see <http://www.epa.gov/tri> for how to contact the TRI Program).

6. Comment Expressing Concern that Some Facilities Might Have Difficulties in Accessing the Internet

One comment expressed concern that some small facilities and some facilities in rural

regions might have difficulties in accessing broadband Internet. Another comment suggested it could take some time for facilities that do not currently use a computer and/or TRI-MEweb to adapt to online reporting. Due to these potential concerns, the comments suggest that the EPA allow for a grace period, consider an interim or transition period, allow for smaller facilities in rural areas to file for waivers, or grandfather smaller and/or rural facilities under the old rule. For waivers, one comment suggested facilities would need to be longstanding reporters of TRI data and demonstrate evidence of extreme difficulty regarding compliance.

One comment also noted the percentage of facilities filing by paper has remained relatively constant since Reporting Year 2005, potentially implying there is a reason why approximately five percent of TRI reporters continue to submit TRI reports by paper.

The EPA has provided notice of this rulemaking since January 2011 when EPA published a notice in the Federal Register (76 FR 2677) that the Agency was considering requiring TRI facilities to submit TRI reporting forms electronically. Additionally, EPA sent a letter via email or postal carrier (if an email address was not available) to technical contacts for facilities that submitted TRI reporting forms for RY 2009 and RY 2008. This letter notified these facilities that EPA was considering a proposed rule to require the electronic submission of TRI reporting forms and informed the facilities of an online discussion forum where any interested stakeholder could comment on EPA's plan to require electronic reporting of TRI reporting forms. EPA recognized the discussion forum was provided electronically, which could bias the discussion toward facilities with access to computers, so EPA explained in the letter that facilities could physically mail comments to the Agency so that the Agency could make these comments available on the discussion forum. While a few comments on the forum expressed concern for small facilities and facilities in rural regions, the EPA did not receive any feedback on the forum

or any written letters indicating any particular facility would face difficulty in complying with a requirement to submit TRI reporting forms using TRI-MEweb. Nor has the EPA received any formal comments in response to the proposal for this rulemaking that indicated any particular facility would have difficulties submitting electronically. Facilities have not stated they would need a grace period to follow an electronic reporting requirement for submitting TRI reporting forms, and the facilities have been alerted to this rulemaking for more than two years and will have nearly a year to prepare before RY 2013 TRI reports are due. The EPA does not foresee that facilities meeting TRI reporting thresholds—which include having ten or more full-time employees and manufacturing, processing, or otherwise using listed toxics above threshold amounts—will have difficulty using a computer or accessing the Internet. The EPA compared facilities that reported for RY 2010 with a database the Federal Communications Commission (FCC) maintains that indicates what parts of the country can access broadband. This analysis determined that all but sixteen facilities likely have access to broadband. Of these sixteen facilities, fourteen already use TRI-MEweb to submit TRI reporting forms to EPA.

Further, as mentioned in the preamble for the proposal, the EPA stopped mailing reporting forms to facilities as a matter of course, instead placing the TRI reporting forms on the TRI website since RY 2006. Since RY 2006, only one facility has requested that the Agency provide a paper form. This facility could access the Internet, but had recently elected to no longer maintain the connection.

7. Comment Recommending Improved Sharing of TRI Information

One comment notes that this rulemaking provides an opportunity to facilitate and encourage similar reporting on the state and local level as well, suggesting the next step should be an information-sharing system or proposal of how to streamline information electronically

with the public on the state and local level. The comment notes that the “TRI Data Exchange (TDX) has great potential to be the platform by which a certain level of intra-governmental cooperation is achieved. . . .”

The EPA does believe that TDX is an effective tool that states, tribes, and territories can use to access TRI reports and that participation in TDX benefits facilities and participating states, tribes, and territories by automatically sending TRI reports alongside the federal submittal, thereby reducing the collective burden to mail, receive, and process the reports.

Outside of TDX, the EPA also cooperates with state and tribal partners on TRI-related issues by regularly meeting with state, tribal, and EPA regional staff to discuss and coordinate TRI-related efforts on national and local levels. Additionally, to streamline information on a local level, the EPA provides a fact sheet for each state. These fact sheets summarize TRI data for each given state. These efforts are designed to help public users of TRI data view and understand TRI data within their communities.

The EPA is also committed to provide timely access to TRI data to the public by making TRI data available less than one month after the July 1st reporting deadline. With electronic reporting, a higher percentage of reports could be processed and released within the first month. Once EPA publicly releases the TRI data, the public can access the TRI data using several tools, which currently include TRI Explorer, myRight-To-Know (myRTK), and Envirofacts (EPA’s one-stop source for environmental information). The EPA continually seeks to improve the ways in which it shares TRI data with the public.

8. Comments Supporting the Rulemaking

Several comments approve of this rule as it will lower costs to the EPA, enable the Agency to provide TRI data more quickly, reduce the possibility of transcription errors, improve

data quality due to the use of data quality checks in TRI-MEweb, and follow the general trend toward electronic reporting.

EPA appreciates the support offered by these comments and agrees that this rule makes it possible for EPA to process the data more quickly and better provide communities with access to the latest TRI data on toxic chemical releases and other waste management. EPA also agrees that the rule will improve the quality of TRI reporting forms due to the data quality checks incorporated into TRI-MEweb.

V. References

EPA has established an official public docket for this action under Docket ID No. **EPA–HQ–TRI-2011-0174**. The public docket includes information considered by EPA in developing this action, which is electronically or physically located in the docket. For assistance in locating any of these documents, please consult the person listed in the above FOR FURTHER INFORMATION CONTACT section.

VI. What Are the Statutory and Executive Order Reviews Associated With This Action?

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, this action would merely change the manner in which the Agency receives information.

The Office of Management and Budget (OMB) has previously approved the information

collection requirements contained in the existing regulations 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned the following OMB control numbers 2025-0009 (EPA Information Collection Request (ICR) No. 1363.21) and 2050-0078 (EPA ICR No. 1428.08). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 USC 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: 1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; 2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and 3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA conducted an economic analysis to consider the possible effects of this rulemaking on small entities. This analysis, "Economic Analysis of the Electronic Reporting Final Rule: Community Right-to-Know; Toxic Chemical Release Reporting" (Ref. #1), demonstrates this rule should not create an economic burden on an individual small business of more than 1% of its sales (or equivalent metric) and, thus, will not have a significant adverse impact on small businesses.

In summary, this rule will create a one-time burden and a minor subsequent burden for facilities that have not previously used TRI-MEweb to submit TRI reporting forms to EPA. This burden would relate to obtaining access to a computer and the Internet, establishing an account in CDX, and associating the CDX account with TRI-MEweb. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document, *Economic Analysis of the Electronic Reporting Final Rule: Community Right-to-Know; Toxic Chemical Release Reporting*, located in the docket.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are small businesses and small governmental jurisdictions. We have determined that 3,180 small parent entities will need to familiarize themselves with this rulemaking and 112 small parent entities might need to register with CDX, establish an ESA, and purchase a computer and obtain Internet access. The maximum impact incurred by any small parent entity is approximately 0.5 percent of their annual revenue.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Throughout the process for this rulemaking, the EPA invited facilities to provide feedback on whether it would be difficult to report electronically. Further, the Agency has continually strived to provide an intuitive, user-friendly reporting system to prepare and submit TRI data that has become widely used by facilities submitting TRI forms. Ultimately, due to its economic analysis and its understanding of regulated community, the EPA does not believe this rulemaking will be burdensome for facilities, including small parent entities, that submit TRI forms.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule will merely require facilities under the TRI Program to submit electronic reports using TRI-MEweb. Most facilities already adhere to this requirement, thus this rule will affect a relatively small number of facilities. Further, the cost to adhere to this rule is small and, in aggregate, will not cost more than \$100 million or more for state, local, and tribal governments, or the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Any small government that reports to the TRI Program will not incur significant costs because the cost, if any, to report electronically, as described above, is minimal.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action would require facilities that submit annual reports under section 313 of EPCRA to do so electronically, which will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). EPA has determined that this rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. Instead, the rule merely affects how facilities report information to the TRI Program. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

E.O. 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Instead, this rule would merely address the manner in which regulated facilities submit reporting information.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule is effective January 21, 2014.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements.

Dated: August 16, 2013. _____

Gina McCarthy,

Administrator

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.85 by:

- a. Revising paragraph (b) introductory text, and
- b. Adding paragraph (c).

The revised and added text reads as follows:

372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) *Form elements.* Information elements reportable on EPA Form R and Form R Schedule 1 include the following:

* * * * *

(c) *Filing Requirements.* Effective January 21, 2014, facilities that submit TRI reporting forms (without claiming a trade secret), including revisions and withdrawals of TRI reporting forms, to EPA must prepare, certify, and submit their data to EPA electronically, using the TRI online-reporting software provided by EPA.

(1) EPA will no longer accept non-trade-secret TRI reports, revisions, or withdrawals on paper reporting forms, magnetic media, or CD-ROMs. Information and instructions regarding online reporting are available on the TRI website.

(2) Facilities must submit electronically any revisions or withdrawals of previously submitted TRI reporting forms. Facilities may submit, revise, or withdraw TRI reporting forms for reporting years 1991 through the present reporting year.

(3) The only exception to this TRI electronic reporting requirement of paragraph (c) relates to TRI submissions that claim a trade secret (including sanitized and unsanitized reporting forms) and revisions and withdrawals of such TRI submissions, which must be submitted to EPA on paper. Facilities may submit, revise, or withdraw these paper trade secret (including sanitized and unsanitized) TRI reporting forms for reporting years 1991 through the present reporting year.

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